

State of California

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Legislative Change No. 08-24
Bill Number: AB 1452 Author: Committee On Budget Chapter Number: 08-763

Laws Affecting Franchise Tax Board: Sections 17039.2, 17276, 17276.9, 17276.10, 17942, 19137, Chapter 9.2 (commencing with Section 19740), 23036.2, 23663, 24416, 24416.9, and 24416.10 of the Revenue and Taxation Code

Date Filed with the Secretary of State: September 30, 2008

SUBJECT: Suspend NOLs 2008 & 2009/Allow 20-year Carryover Starting 2008/Allow 2-year Carryback Starting 2011/Tax Amnesty 2009/Create LLC Estimated Payment/50% Limitation on Business Credits/Assignment of CTL Credits Among Members

Assembly Bill 1452 (Committee On Budget), as enacted on September 30, 2008, made the following changes to laws impacting the Franchise Tax Board:

Section 17039.2 of the Revenue and Taxation Code is added.

This act limits the amount of allowable "business credits" to an applicable amount. "Business credit" includes credits under a specific chapter of the Personal Income Tax Law (PITL) other than credits relating to household and dependent care, adoption costs, renters, personal exemption, joint custody head of household and for care of dependent parent, senior head of household, and excess contributions of unemployment compensation. This act specifically provides that these excluded credits shall be required to be applied before any business credits.

This act excludes taxpayers with net "business income" of less than \$500,000. "Business income" means income from a trade or business (including partnerships and S corporations), rental activities, and a farming business.

As an urgency statute, this provision of the act is effective immediately upon enactment and is specifically operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.

This provision of the act will not require any reports by the department to the Legislature.

Section 17276 of the Revenue and Taxation Code is amended.

This act makes the following changes:

1. Conforms to the federal net operating loss (NOL) carryback rules for NOLs attributable to taxable years beginning on or after January 1, 2011, with the following modifications:
 - Allow an NOL to be carried back only two years. (Federal law has special rules that in some cases allow an NOL to be carried back for a longer period.)
 - Limit the amount of NOL carryback attributable to taxable year 2011 to 50% of the net operating loss.

Assistant Bureau Director
Patrice Gau-Johnson

Date
11/07/08

- Limit the amount of NOL carryback attributable to taxable year 2012 to 75% of the net operating loss.
- Conform to the federal carryback period for a Real Estate Investment Trusts (REITS) and a corporate equity reduction interest loss, which is zero.
- Disallow NOL carrybacks to any taxable year beginning before January 1, 2009.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically operative for NOLs attributable to taxable years beginning on or after January 1, 2011.

2. Allows a 20-year NOL carryover period for NOLs attributable to taxable years beginning on or after January 1, 2008.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically operative for NOLs attributable to taxable years beginning on or after January 1, 2008.

These provisions of the act will not require any reports by the department to the Legislature.

Section 17276.9 of the Revenue and Taxation Code is added.

This act disallows NOL deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with net business income of \$500,000 or more. "Net business income" means income from a trade or business, whether conducted by the taxpayer or by a pass-through entity (partnership or S corporation), income from rental activity, and income attributable to a farming business. However, deductions for NOL carrybacks from taxable years beginning on or after January 1, 2011, would be allowed.

In addition, this act extends the NOL carryover period by one year for NOLs incurred in taxable year 2008, and two years for NOLs attributable to taxable years beginning before January 1, 2008.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.

This provision of the act will not require any reports by the department to the Legislature.

Section 17276.10 of the Revenue and Taxation Code is added.

This act allows a 20-year NOL carryover period and a NOL to be carried back 2 years for special NOLs (i.e., economic development areas).

As an urgency statute, these provisions would be effective immediately upon enactment and would be specifically operative as follows:

1. Extension of NOL carryover period to 20 years: operative for NOLs attributable to taxable years beginning on or after January 1, 2008.
2. Allowance of a NOL carryback: operative for NOLs attributable to taxable years beginning on or after January 1, 2011.

This provision of the act will not require any reports by the department to the Legislature.

Section 17942 of the Revenue and Taxation Code is amended.

This act requires a Limited Liability Company (LLC) to estimate and pay its LLC fee by the 15th day of the 6th month of the taxable year (e.g. June 15th for calendar year taxpayers). In addition, this act imposes a 10% penalty when an LLC underpays the estimated fee under certain circumstances. The underpayment penalty would not be imposed when the estimated fee payment for a taxable year is greater than or equal to the LLC's prior year fee liability.

As part of an urgency statute, these provisions of the act are effective immediately on the date of enactment and operative as of that date. LLCs with a taxable year beginning on or after May 1, 2008, are subject to the new requirement. SBX1 28 (Stats. 2008, Ch. 1) clarified that the operative date for the requirement for an LLC to pay its fee by the 15th day of the 6th month is specifically operative for taxable years beginning on or after January 1, 2009.

This provision of the act will not require any reports by the department to the Legislature.

Section 19137 and Chapter 9.2 (commencing with Section 19740) of the Revenue and Taxation Code is added.

This act authorizes the Franchise Tax Board (FTB) to conduct a tax amnesty for the 2003 through 2006 tax years for corporation and personal income taxpayers. These provisions of the act were repealed by SBX1 28 (Stats. 2008, Ch. 1).

Section 23036.2 of the Revenue and Taxation Code is added.

This act limits the amount of allowable tax credits to an "applicable amount." "Applicable amount" is equal to 50% of the tax before the application of any credits. Any disallowed credit remains a credit carryover to subsequent years and the credit carryover period is increased by the number of taxable years the credit amount was disallowed.

In addition, this act excludes taxpayers with income subject to tax of less than \$500,000.

As an urgency statute, this provision of the act is effective immediately upon enactment and is specifically operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.

This provision of the act will not require any reports by the department to the Legislature.

Section 23663 of the Revenue and Taxation Code is added.

This act allows the assignment of certain credits to taxpayers under Corporation Tax Law that are members of a combined reporting group and adds the following provisions:

- Provides that an “eligible credit” may be assigned by a taxpayer to an “eligible assignee.”
 - “Eligible credit” means any credit earned by a taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer’s first taxable year beginning on or after July 1, 2008.
 - “Eligible assignee” means any “affiliated corporation” that is properly treated as a member of the same combined reporting group.¹
 - “Affiliated corporation” means a corporation that is a member of a commonly controlled group.²
- Provides that the election to assign any credit is irrevocable once made and is required to be made on the taxpayer’s original return for the taxable year in which the assignment is made.
- Gives the FTB authority to issue rules, procedures, guidelines, and regulations necessary to implement this provision.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically allows for the assignment of any credit allowed to a taxpayer in taxable years beginning on or after July 1, 2008. In addition, this provision of the act specifically disallows an assigned credit to reduce tax for a taxable year beginning before January 1, 2010.

This provision of the act requires FTB to issue a report on or before June 30, 2013, to the Joint Legislative Budget Committee, the Legislative Analyst, and the relevant policy committees.

Section 24416 of the Revenue and Taxation Code is amended.

This act makes the following changes:

1. Conforms to the federal NOL carryback rules for NOLs attributable to taxable years beginning on or after January 1, 2011, with the following modifications:
 - Allow an NOL to be carried back only 2 years. (Federal law has special rules that in some cases, allow an NOL to be carried back for a longer period.)
 - Limit the amount of NOL carryback attributable to taxable year 2011 to 50% of the net operating loss.
 - Limit the amount of NOL carryback attributable to taxable year 2012 to 75% of the net operating loss.

¹ Pursuant to R&TC section 25101 or 25110.

² R&TC section 25105.

- Conform to the federal carryback period for a Real Estate Investment Trusts (REITS) and a corporate equity reduction interest loss, which is zero.
- Disallow NOL carrybacks to any taxable year beginning before January 1, 2009.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically operative for NOLs attributable to taxable years beginning on or after January 1, 2011.

2. Allows a 20-year NOL carryover period for NOLs attributable to taxable years beginning on or after January 1, 2008.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically operative for NOLs attributable to taxable years beginning on or after January 1, 2008.

These provisions of the act will not require any reports by the department to the Legislature.

Section 24416.9 of the Revenue and Taxation Code is added.

This act disallows NOL deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with income subject to tax of \$500,000 or more. However, deductions for NOL carrybacks from taxable years beginning on or after January 1, 2011, would be allowed.

In addition, this act extends the NOL carryover period by one year for NOLs incurred in taxable year 2008, and two years for NOLs attributable to taxable years beginning before January 1, 2008.

As an urgency statute, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.

This provision of the act will not require any reports by the department to the Legislature.

Section 17276.10 of the Revenue and Taxation Code is added.

This act allows a 20-year NOL carryover period and a NOL to be carried back 2 years for special NOLs (i.e. economic development areas).

As an urgency statute, these provisions would be effective immediately upon enactment and would be specifically operative as follows:

1. Extension of NOL carryover period to 20 years: operative for NOLs attributable to taxable years beginning on or after January 1, 2008.
2. Allowance of a NOL carryback: operative for NOLs attributable to taxable years beginning on or after January 1, 2011.

These provisions of the act will not require any reports by the department to the Legislature.